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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER BRIEF FOR ZENITH RADIO CORPORATION TO THE BRIEF OF THE UNITED STATES AS AMICUS CURIAE.

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INDEX.

	PAGE
FOREWORD	1
I. THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OR FOR A RECOMPUTATION OF DAMAGES IN CANADA	2
A. The Release	2
B. The Findings Are Adequate	7
II. THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OF FOR A RECOMPUTATION OF DAMAGES IN ENGLAND	10
A. The Fact of Damage as to Radio	10
B. The Adequacy of the Findings as to Television	11
III. THE DISTRICT COURT'S FINDINGS AND JUDGMENT AS TO AUSTRALIA SHOULD BE REINSTATED BY THIS COURT	14
CONCLUSION	17

CITATIONS.

Cases.

Anderson v. National Producing Co., 253 F. 2d 834 (2d Cir. 1958)	4
Connecticut Importing Co. v. Frankfort Distilleries, 101 F. 2d 79 (2d Cir. 1939)	6
Continental Ore Co. v. Union Carbide Corp., 370 U. S. 690 (1962)	16
Ginsberg v. Royal Ins. Co., 179 F. 2d 152 (5th Cir., 1950)	8
Hardy Salt Company v. State of Illinois, 377 F. 2d 768 (8th Cir., 1967)	7
Hazeltine Corporation v. General Motors Corporation, 131 F. 2d 34 (3rd Cir., 1942)	8

Lawlor v. National Screen Service Corp., 349 U. S. 322 (1955) 5
Leh v. General Petroleum Corp., 382 U. S. 54 (1965).. 7
Mercoid Corp. v. Mid-Continent Invest. Co., 320 U. S. 661 (1944) 6
Milwaukee Towne Corp. v. Loew's Inc., 190 F. 2d 561 (7th Cir., 1951) 14
Minnesota Mining v. New Jersey Wood F. Co., 381 U. S. 311 (1965) 7
O'Toole v. United States, 242 F. 2d 308 (3rd Cir., 1957). 8
Standard Title Insurance Co. v. Roberts, 349 F. 2d 613 (8th Cir., 1965) 4
Systems, Inc. v. Bridge Electronics Company, 335 F. 2d 465 (3rd Cir., 1964)..... 4
United States v. General Electric (S. D. N. Y. Civil No. 140-157), 1962 CCH Trade Cases ¶¶ 70,546, 70,428, 70,342 7
United States v. Loew's Inc., 371 U. S. 38 (1962).... 17
United States v. Yellow Cab Co., 338 U. S. 338 (1949).. 16

Statutes and Rules.

15 U. S. C. § 16 (b)..... 7
Rule 15 (b) of the Federal Rules of Civil Procedure.. 4
Rule 52 (a) of the Federal Rules of Civil Procedure.. 7
Uniform Contributions Among Joint Tort-Feasors Act § 4 6

Text.

5 Moore's Federal Practice (2d Ed. 1968) ¶ 52.06 [1] pp. 2652-61 8

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FOREWORD.

The government agrees with petitioner that the patent pools in Canada and England violate the Federal antitrust laws. It also agrees that the record adequately establishes the fact of damage and the threat of future damage to petitioner's business in these markets which requires reinstatement of the District Court's findings. However, the government suggests that the cause should be remanded for certain more specific findings and for recom-

putation of damages in Canada and England. It also suggests that the Court of Appeals decision should be affirmed with respect to Australia. It is to these suggestions that this reply is directed.

I.

THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OR FOR A RECOMPUTATION OF DAMAGES IN CANADA.

A. The Release.

1. The government's principal ground for suggesting a remand on Canada appears to be based on a misunderstanding of the record concerning the so-called defense of release. It apparently believes that the Trial Court may have permitted Hazeltine to amend its pleading in order to assert this affirmative defense (Govt. Br. 44). The record shows that no such permission was ever granted.

The release issue was actually raised for the first time one year after trial and after findings had been entered as part of an offer of proof (A. 2957) made when Hazeltine's new counsel moved to withdraw the findings and to dismiss the counterclaim (A. 2939). The motion was based on a contrived contention that the antitrust issues had been tried on a "surprise" theory of action not stated in the counterclaim but for which surprise the defenses of release and limitations would have been pleaded by Hazeltine at the inception of the case (A. 2943). The Trial Court took a dim view of this contention and carefully pointed to the pleading allegations and pre-trial briefs which in his opinion made Zenith's theory plain to anyone able to "understand the English language" (Court of Appeals Appendix, A. 1865, 1870, 1934, 1950). The Court completely rejected Hazeltine's change in legal theory argument but did permit it to file unsigned copies of the Zenith-RCA releases as an offer of proof "to be sure that you [Hazel-

tine] feel that your record is adequately protected" on this issue (Court of Appeals Appendix, A. 1953).

Hazeltine counsel then asked "for the sake of the record . . . to make a couple of oral motions" in view of the fact "that the question has been raised as to whether or not the cause of action for damages stated in the findings was in fact disclosed and pleaded" (A. 3036). He first moved for leave to file "within a short date, our affirmative defense as a formal pleading of release and statute of limitations" and "again, to complete the record, to move at this time . . . that the counterclaim as embodied in the findings be dismissed . . . by reason of the bars of the statute of limitations and the releases" (A. 3036). The Trial Court declared that "the record will show that leave is given to file them at this time, *after proofs are closed and after findings have been made*" and immediately went on to hold that "In regard to Canada there will be no change [in the findings] as far as the Court is concerned" (A. 3037, 3038). His ruling was reflected in a minute order entered the same day which stated "Oral motions of Hazeltine for lv to fl affirmative defenses and to dism counterclaim for lack of proof & lv is granted to fl said motions in writing within 5 days *nunc pro tunc* as of Apr. 1, 1965." Hazeltine's motions to withdraw the findings as to Canada and to dismiss the counterclaim were then promptly denied (A. 3038, 3040, 3062).

The record thus shows that the Trial Court did not permit Hazeltine to amend its answer in order to plead the affirmative defense of release. It did, however, extend respondent every opportunity to protect his record in the event a reviewing court was prepared to take a more charitable view of Hazeltine's "surprise" change of legal theory contention. His rulings in this regard were in complete accord with the federal precedents which without significant exception hold that "an affirmative defense which

is neither pleaded as required by rule 8(c) nor made the subject of an appropriate motion under rule 12(b) is waived [citations]. The waiver is final if the defendant fails to correct the omission either prior to trial or during trial as permitted by rule 15(a)(b) of the Federal Rules of Civil Procedure, 28 U. S. C. A." *Systems, Inc.* v. *Bridge Electronics Company*, 335 F. 2d 465, 466 (C. A. 3, 1964); *Standard Title Insurance Co.* v. *Roberts*, 349 F. 2d 613, 622 (C. A. 8, 1965); *Anderson* v. *National Producing Co.*, 253 F. 2d 834, 836 (C. A. 2, 1958).

In this case the Rule 15(b) provision for post trial pleading amendment was completely inapplicable because Hazeltine did not attempt to amend its answer to conform to the proofs adduced at the trial. The releases were never introduced or offered in evidence and no release issue was ever tried. While Hazeltine did place the Zenith-RCA settlement agreement in evidence, this document was offered to show that the settlement "was not a one-sided capitulation by which RCA gave up everything and got nothing" in return (A. 660). It was never suggested by Hazeltine that an undetermined part of the settlement proceeds represented a present recovery of some speculative future damage not incurred when the settlement was made. As a matter of fact Hazeltine's counsel contended that the RCA litigation had "very little relationship" to this case (A. 921-2) and involved "widely different charges" (A. 658). Now Hazeltine does an about-face and claims that the two cases are identical and that this case should be remanded to permit them to show a partial satisfaction based on settlement of the RCA case.

2. In considering the release issue the government also comments that Zenith has never challenged Hazeltine's as-

sertion that the common law rule concerning release of joint tort feasors should be given effect in antitrust actions (Govt. Br. 42). The assertion was not previously challenged for the reason already stated and for the equally compelling reason that Zenith never claimed damages in this action for illegal pool activity pre-dating the 1957 release. Its recovery only represented the damages Zenith actually incurred during the 1959-1963 period as a proximate result of the continued existence and operation of the Canadian pool after the Zenith-RCA settlement.

The record shows that Zenith management was directly confronted by Hazeltine and the Canadian pool in 1958 and 1959 and the Canadian trade was again warned and reminded of the consequences of trading in imported receivers (A. 410, 1879-80, 2014-18). The confrontation continued throughout the pretrial and trial of this case with Hazeltine asserting that the Canadian Patent Act protected the activities of the pool (A. 131, 134), that it intended to remain in the pool (A. 178-9), and that Zenith should expect to be sued for importing infringing receivers into Canada (A. 131, 132). Moreover, the damaging effect on Zenith of all of this activity is recognized in the government's brief (Govt. Br. 6-11, 34-41).

The 1957 release therefore would have no bearing on this case even if it had been pleaded as an affirmative defense. At the very most execution of that document in 1957 could the very most execution of that document in 1957 could only have disposed of Zenith's then existing antitrust claims. It did not constitute a blank check for Hazeltine and the Canadian pool to continue the same illegal conduct which was the subject of the RCA litigation. *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322 (1955). This much was even conceded by Hazeltine counsel who agreed that a release of any future antitrust violation would be

"against public policy." (Court of Appeals Appendix, A. 1885, 2019.)[1]

3. Were the release defense otherwise applicable in this case, Zenith would not concede that Hazeltine was thereby absolved from liability for patent pool activities that occurred prior to the 1957 release date. The common law rule upon which Hazeltine relies, *i.e.*, that the release of one joint tort-feasor releases all, grew out of old common law procedural concepts which have no modern relevancy. The rule ordinarily conflicts with the intention of the parties, results in windfalls for co-conspirators who thereby manage to avoid any liability for damages, and frequently requires a plaintiff either to forego a partial settlement opportunity with one defendant or to give up his entire claim against others without full compensation.

We submit that rather than adopt the outmoded common law doctrine, a federal rule should be fashioned whereby a release given by an antitrust plaintiff to one defendant would not discharge his co-conspirators unless the release expressly so provides. This would be in keeping with the approach taken in Section 4 of the Uniform Contributions Among Joint Tort-Feasors Act (U. C. A. T. A. § 4) and would be more consonant with the public interest in the enforcement of the antitrust laws. Cf. *Mercoid Corp.* v. *Mid-Continent Invest. Co.*, 320 U. S. 661, 669-70 (1944).

The record and offers of proof here show that Hazeltine was not a party to the Zenith-RCA litigation (A. 2727), was not described as a co-conspirator in Zenith's complaint (A. 2726, 2734), contributed nothing to the settlement (A.

1. Moreover, had Zenith sought anticipated damages in 1957 for the 1959-1963 period, which it did not (A. 2726-2733), such damages would not have been recoverable because of their speculative nature. *Connecticut Importing Co.* v. *Frankfort Distilleries*, 101 F. 2d 79, 81 (C. A. 2, 1939). Such an unmatured claim could not be discharged by release.

2783, 2784), and was not named in the release given RCA, General Electric, and Western Electric (A. 3051, 3052). Under these circumstances even had the release been pleaded and received in evidence, no sound reason would exist for permitting Hazeltine to escape liability for its illegal conduct during any period of time open under the statute of limitations.[2]

B. The Findings Are Adequate.

The only other ground advanced by the government for suggesting a remand on Canada is that the trial court's findings are insufficient to show that the Canadian pool was the cause of Zenith's inability to achieve proper distribution of its product during the damage period (Govt. Br. 45-6). While the findings relative to this issue contain no detailed recital of the testimony and documentary evidence, they were plainly adequate to perform their function.

We start with the principle that under Rule 52 (a) of the Federal Rules of Civil Procedure, a District Court as trier of fact is only required to set forth such ultimate facts as are necessary for proper adjudication of the case and is not obliged to make findings encompassing each and every detail borne out by the evidence. Findings are satisfactory when they adequately apprise an appellate tribunal

2. The damage period available to Zenith not only would include the entire period after the September, 1957 R. C. A. settlement but would actually extend back to 1954 because of the pendency of the government civil action referred to at page 62 of the government brief. See *United States* v. *General Electric* (S. D. N. Y. Civil No. 140-157), 1962 CCH Trade Cases ¶¶ 70,546, 70,428, 70,342. Hazeltine was named as a co-conspirator in that case and by virtue of the amended tolling statute, 15 U. S. C. § 16 (b), the statute of limitations was tolled during the pendency of the government action from November 24, 1958 (A. 2753) to November 1, 1963, one year after termination of the proceeding through entry of the final consent decree against General Electric (A. 2767). *Minnesota Mining* v. *New Jersey Wood F. Co.*, 381 U. S. 311 (1965); *Leh* v. *General Petroleum Corp.*, 382 U. S. 54 (1965); *Hardy Salt Company* v. *State of Illinois*, 377 F. 2d 768 (C. A. 8, 1967), cert. den. 389 U. S. 912 (1967).

of the basis for decision. *Ginsberg* v. *Royal Ins. Co.*, 179 F. 2d 152, 153, 154 (C. A. 5, 1950); *Hazeltine Corporation* v. *General Motors Corporation*, 131 F. 2d 34, 37 (C. A. 3, 1942); *O'Toole* v. *United States*, 242 F. 2d 308, 310, 311 (C. A. 3, 1957); 5 *Moore's Federal Practice* (2nd Ed. 1968) ¶ 52.06 [1], pp. 2652-61. If the findings comply with these standards they need not also negative or formally reject the contentions of the losing parties.

In the present case, after entering detailed findings on the pools and their object and purpose to prevent importation, the Trial Court formally found that "The foreign commerce of Zenith has been drastically curtailed by the patent Pools in England, *Canada* and Australia" and that "Zenith's foreign commerce has been damaged by the Pools in the following amounts during the 4-year statutory damage period: . . ." (Finding XXXVI; A. 2908). This finding as it relates to Canada was clearly based on Wright's testimony concerning the two-pronged effect on Zenith of the pool's publicized existence and operations. He testified that dealers and distributors were unwilling to assume the obvious risk of handling merchandise that would subject them to infringement charges (A. 453, 494) and further that Zenith management, as rational businessmen, dared not undertake the risks to Zenith of full scale penetration of the Canadian market until the cartel controversy was resolved in this litigation (A. 490). Wright also pointed out the obvious impact of continued publication of the pool's warning notice on the Canadian trade and their willingness to handle unlicensed receivers (A. 458).

This testimony was not only credited by the trial court, in Finding XXXVI, but its significance was recognized by the government in its brief. For example the government states:

> "Zenith's executives testified that these efforts impaired its abilities to find distributors and inhibited its

efforts to exploit the Canadian market. Nothing in the record refutes their testimony . . ." (Govt. Br. 24.)

• • • • •

". . . the more effective the violation, the fewer are the overt efforts that the rational businessman will make to enter a restrained market before bringing suit." (Govt. Br. 24.)

• • • • •

"The finder of the fact was entitled to conclude that by 1959 the pool, through a course of conduct spanning decades, had done everything possible to convince Zenith that exports to Canada would be met with infringement actions and to convince potential merchandisers and buyers of Zenith products that they too would suffer legal action by dealing in or using imported television sets and radios. The more successful these efforts had been, moreover, the less need there would be for the pool to make similar overt efforts during the damage period. HRI argues (HRI Br. 54) that the lack of proof of specific overt acts—except a threat to a Motorola dealer—during the damage period negates any finding of injury; but the finder of fact was entitled to attribute the pool's relative quiescence during this period to the success rather than the collapse of the pool's opposition." (Govt. Br. 39.)

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"The victim of a predatory scheme may justifiably conclude that it is useless to seek to enter a market, however much he may wish to." (Govt. Br. 52.)

We submit that to require the Trial Court to make an additional finding at this stage that "Zenith was unable to obtain a full-fledged Canadian distribution system during the damage period" because of the pool, would be merely ordering it to state in different words that which has already been clearly found.

II.

THERE IS NO NEED FOR A REMAND FOR FURTHER FINDINGS OR FOR A RECOMPUTATION OF DAMAGES IN ENGLAND.

A. The Fact of Damage as to Radio.

The government concludes that the evidence is insufficient to support a finding that Zenith was injured in exporting radios to England (Govt. Br. p. 30-1). It bases this conclusion on Wright's testimony that most of the important radio patents had expired and that the pool had not interfered with Zenith's distributor Ramsey (A. 463-4). In so concluding, the government fails to give petitioner the full benefit of its evidence and permissible inferences. The government's position also ignores commercial realities. Wright testified that it was Zenith's usual marketing practice to distribute radio and television together. He said "well, we really handle radio and television together as a distribution thing; the same concern will handle both of them together" (A. 472). Wright further testified that Zenith could only distribute radios in England because a pool license for television was unavailable. He said that Ramsey was "unwilling to try to invest much in the television business because this required too large an inventory speculation for him" in view of the pool threat to television and that for the same reason Zenith had not made any effort on television (A. 463-4). Not only were Zenith's radio sales thus hampered by the lack of television distributors, but even as to radios Zenith only had limited distribution. Wright testified that Ramsey "was willing to take a chance and bring radios in without a pool license and . . . build up *some* distribution" and that he knew of no pool interference "with reference to his *limited* distribution" (A. 474). Wright also testified that

although there were few important radio patents by 1959, this would not prevent the pool from asserting radio patents and threatening infringement suits on them (A. 471). Ramsey obviously was aware, just as another prospective distributor had written years before, that the line had to be handled with "discretion" (DX 108, A. 1542-3). Finally, the Wright and Kaplan projections as to radio sales assumed a completely open market, free of *all* pool restrictions on imports, both radio *and television* (A. 465; 528-9). We submit that the foregoing was more than adequate to support the District Court's damage findings as to radio.[3]

B. The Adequacy of the Findings as to Television.

The government agrees that the evidence is adequate to allow the finder of fact to conclude that Zenith had the necessary intent and capacity to export television to England (Govt. Br. p. 46) and that Zenith would have sold television sets in England during the damage period but for the pool (Govt. Br. p. 49). It suggests, however, that the case should be remanded for an additional finding

3. Moreover, Zenith was precluded from making arrangements to use the distributing organizations of British radio and television manufacturers. As pool licensees, such manufacturers were prohibited by the terms of their license from dealing in imported radio and television receivers. The pool license provided: "The Licensee agrees with the Grantors as follows:—(a) Not without the previous written consent of the Grantors to sell within the said territory any Broadcast Sound Receiver which has not been manufactured in the territory for which this License is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail list price thereof" (A. 1337). Twelve British manufacturers accounted for 80% of the English radio and television market (DX 78B, A. 1442). Moreover, the evidence showed that these manufacturers would not deal with distributors handling imported apparatus (DX 111, A. 1557-8).

tracking Wright's testimony that further attempts to secure television distribution in England during the damage period were futile in view of the pool's policy not to license imports (Govt. Br. p. 53). What we said about Canada with respect to the adequacy of the findings applies equally in the case of England.

Wright testified that after 1958 Zenith talked to several men in England "about all of the products [radio and television], but we were given to understand that television was just out of the question" (A. 474), that although Ramsey "was willing to take a chance and bring radios in without a pool license" (A. 474), he was "unwilling to try and invest much in the television business because this required too large an inventory speculation for him" (A. 463) and that "we [Zenith] have not made any effort on television because we were informed that the pool license then in effect, (sic) and there was no possibility of getting such a license" (A. 464). See also Govt. Br. pp. 12-13.

On the basis of this testimony and other evidence the District Court expressly found that "Zenith has been *constrained* from entering the British television market by the threat of the assertion against it of pooled patents, although Zenith has successfully engineered sets for the British market and has shipped some to its English distributor with the hope that the injunctive relief sought in this suit would be granted and business on a comercial scale could be conducted" (Finding XXII, A. 2902). The Court also found that "The foreign commerce of Zenith has been drastically curtailed by the patent pools in England, Canada and Australia" (Finding XXXVI, A. 2908) and after the embargo hearing, again observed, "There could be no question in my mind that Zenith suffered damages during the damage period by virtue of the pools which I have found, and reiterate, existed at the time of the damage period" (A. 3524). In view of these findings, we are

at a loss to understand what useful purpose would be served by a remand for further findings on this issue as the government suggests.

The government next comments that the findings are inadequate because they do not indicate the basis for the Court's recomputation of damages in England and that apart from Wright's and Kaplan's testimony there is no evidence to support the Court's amended damage award (Govt. Br. 56). The government, however, proceeds to answer its own argument when it states in the next sentence "Perhaps the district judge simply *scaled down* that testimony according to his judgment of the degree of puff in those witnesses' opinions." That the Court was simply "scaling down" the damage estimates is clear from his remarks at the time. He did not reject the Wright and Kaplan testimony, but concluded that Zenith could not have obtained the market share testified to by them "starting from scratch" in 1959 and, accordingly, reduced the damage amounts (A. 3524-5). Referring to the Wright and Kaplan estimates the Court observed, "the Court is aware of the pride of officers in their corporation and the belief in their product" (A. 3525). At the same time he reduced the damage amount the District Judge reiterated his finding that Zenith had suffered damages during the damage period because of the pools (A. 3524) stating, "there is no question they lost money by virtue of the pools' excluding them" (A. 3525).

Finally, the government suggests that if Zenith were not damaged in its radio sales in England that this may require a recomputation of television damages "for the evidence shows that Zenith's actual sales of radios in England were far less than the amounts Wright and Kaplan projected" (Govt. Br. 57). This, of course, assumes that Zenith's radio sales represented sales in an unrestricted market contrary to the District Court's finding and what

the record shows. Even the government concedes that England was a partially restricted market inasmuch as Zenith could not obtain television distribution without a pool license which was unavailable and that this could have affected radio sales (Govt. Br. 31). Moreover, as appears from DX 220 (A. 2661), Zenith enjoyed a substantially greater percentage of the United States television market than it did for radio (17.4% for television and 10.6% for radio in 1962). The projections of radio and television sales in England were based on 25% of Zenith's United States market share. The projections for television sales, however, were not tied to radio sales. Accordingly, it does not follow, as apparently the government concedes (Govt. Br. 59), that Zenith's television experience would be similar to its radio experience. This being the case, and the fact of damage having been conceded as to television, we see no basis for disturbing the District Court's determination of the damage amount as to television. See *Milwaukee Towne Corp.* v. *Loew's Inc.*, 190 F. 2d 561, 566 (C. A. 7, 1951).

III.

THE DISTRICT COURT'S FINDINGS AND JUDGMENT AS TO AUSTRALIA SHOULD BE REINSTATED BY THIS COURT.

The government does not question that Zenith had the capacity to export radio and television to Australia; nor does it dispute that the ARTS pools license would not permit imports. It concludes, however, that the evidence is insufficient to establish that Zenith had the requisite intent to enter this market (Govt. Br. 31). As the government concedes the issue of intent depends "on what the ordinary, rational businessman would do in the particular situation to evidence his desire to enter the foreclosed market" (Govt. Br. 32), and ". . . the more effective

the violation, the fewer are the overt efforts that the rational businessman will make to enter a restrained market before bringing suit'' (Govt. Br. 24).

The record shows that Zenith attempted to enter the Australian market in the early 30's but was blocked by the pool (A. 475-6) and the District Court found that importation on a commercial scale was precluded independently of the pool because of so-called government embargoes from 1946 to April, 1960. As to the period immediately preceding the damage period, Wright testified that he had talked to business people in Australia about the possibility of distributing Zenith's radio and television products but was told that in order to do business in Australia, Zenith would have to set up a factory there (A. 474-5). Wright further testified he had ''discussed this matter with many people in Australia with a view to distribution and there was no question in their mind that we could not get such a license and there was no use talking about any sort of arrangement that contemplated that'' (A. 476). A letter dated March 20, 1957 by Zenith's International Sales Manager states: ''Although we have always been interested in marketing our Zenith sets in Australia, we have not been successful in this effort because of the Australian Patent Pool. Anyone in Australia importing, distributing or reselling Zenith products has been harassed and threatened with lawsuits by this Pool, in consequence of which importers, distributors and dealers have been discouraged to handle our products. It is hoped that in the not too distant future this situation can be broken to permit us to offer freely our products from (sic) distribution and resale in Australia without restrictions or difficulties, except those normally encountered from government import license and exchange regulations'' (DX 215, A. 2526) (See also DX 215, A. 2524).

The government credits this evidence, but says that it

is not enough to show intent. But where the critical issue is subjective intention, that issue is a matter peculiarly within the province of the trier of fact. See *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 341-2 (1949). Moreover, what more would the government require? Certainly a formal demand on the pool for a license to import was not necessary. Such a demand would have been futile because the record shows that a license to import was not available and this Court has held that a formal demand is not a condition precedent to maintaining a treble damage action. *Continental Ore Co.* v. *Union Carbide Corp.*, 370 U. S. 690, 702 (1962). See also Zenith's opening brief pp. 91-6. The only other action which Zenith could have taken to manifest its intention to enter the Australian market would have been to establish its own distributing organization in Australia and commence to export radios and television on a commercial scale. Apart from the obvious expense involved, Zenith thereby would have risked infringement litigation and confiscation of its sets. We submit that responsible management could not be expected to take this further step. The District Court obviously agreed. Implicit in the Court's findings of damage in Australia is the finding that Zenith had the necessary intent and interest in exporting to this market and would have done so but for the pool. The Court not only found that Zenith's foreign commerce to Australia had been "drastically curtailed" but that Zenith had incurred substantial damages because of the pool restrictions (A. 2908). Any doubt as to the District Court's thinking was put to rest when he reiterated his finding of injury after the embargo hearing (A. 3524-5).[4]

4. Turning to one final matter, we note that while the government does not officially comment on the modification of Paragraph B of the injunction, it does express "some doubt" about the Court of Appeals' addition to the injunction which once again permits Hazeltine to license individual patents at more than the package rate (Govt. Br. 22). This addition completely destroyed the relief obtained to deal with the coercive licensing proposals which even the Court of Appeals recognized as a misuse. The

CONCLUSION.

In our view, the findings in this case are wholly adequate to sustain the judgments entered by the Trial Court. They are sufficiently comprehensive to form a basis for the Court's decision and are fully supported by the evidence. We therefore fail to see how any useful purpose would be served by requiring the Trial Court to enter additional findings in order to further detail the evidence or to negative the rejected contentions of Hazeltine.

As the government observes, Hazeltine's activities "involve the most flagrant form of the abuses condemned" by the decisions of this Court in prior patent pooling cases (Govt. Br. 59-60). Its conduct was not inadvertent or a gray-area violation. It was continued in the face of government criminal and civil prosecutions involving these very pools and in the face of the settlement of Zenith's litigation with RCA, General Electric and Western Electric. During the trial of this case, Hazeltine re-asserted its intention to remain in the pools (A. 179). In view of this deliberate and flagrantly illegal conduct, we submit that Hazeltine should not be relieved of the consequences of its wrongdoing merely because the resulting damages involve large amounts.

Respectfully submitted,

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government's position should be contrasted with that taken in *United States* v. *Loew's Inc.*, 371 U.S. 38 (1962), where it was quick to complain about the adequacy of relief granted with respect to the package licensing of films.